



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on May 21, 2004

**NOTICE OF ACTION TAKEN -- DOCKETS OST-2004-17517**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Caribbean Star Airlines, Ltd. & Caribbean Sun Airlines, Inc.** Date Filed: April 7, 2004

Relief requested:

**Caribbean Star Airlines, Ltd.**--Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between St. Johns, Antigua, on the one hand, and San Juan, Puerto Rico, and St. Thomas, U.S. Virgin Islands, on the other hand, pursuant to a code-share arrangement with Caribbean Sun Airlines, Inc., a U.S. certificated air carrier.

**Caribbean Sun Airlines, Inc.**—Statement of authorization under 14 CFR Part 212 to the extent necessary to permit Caribbean Sun Airlines, Inc. (Caribbean Sun) to display the designator code of Caribbean Star Airlines, Ltd. (Caribbean Star) on flights operated by Caribbean Sun between San Juan, Puerto Rico, and St. Thomas, U.S. Virgin Islands, on the one hand, and St. Johns, Antigua, on the other hand.

If renewal, date and citation of last action: New authority

Applicant(s) representative: Nathaniel P. Breed, Jr. (202) 973-7919

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

**DISPOSITION**

Action: Approved

Action date: May 21, 2004

Effective dates of exemption authority granted Caribbean Star: May 21, 2004-May 21, 2005

Effective dates of the statement of authorization granted Caribbean Sun: May 21, 2004-Indefinite

Basis for approval (bilateral agreement/reciprocity): Air Services Agreement between the United States and the United Kingdom concerning air services to which Antigua and Barbuda acceded upon independence in 1981 (the Agreement)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: X  
Standard exemption conditions (Caribbean Star Attachment A & Caribbean Sun Attachment B) & Caribbean Sun's Certificate of Public Convenience and Necessity issued by Order 2002-12-18.

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Caribbean Star is financially and operationally qualified to perform the services authorized above.<sup>1</sup> We also found that Caribbean Star is substantially owned and effectively controlled by citizens of Antigua. Specifically,

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<sup>1</sup> Caribbean Star's application was accompanied by a motion under Rule 12 (14 CFR § 302.12) to withhold certain financial information from public disclosure. In support of its motion, Caribbean Star states that it is a privately held Antiguan company and, as such, is not required by its government to disclose such information. Moreover, Caribbean Star states that the Government of Antigua allows U.S. carriers to file financial statements in connection with applications for Antiguan authority on a confidential basis. Caribbean Star states that disclosure of such information would adversely affect Caribbean Star's competitive interest *vis a vis* its commercial competitors and is not required by the public interest. Because of the commercially sensitive nature of the information, we have determined that the documents fall within the Freedom of Information Act exemption for proprietary information and would adversely affect the competitive position of Caribbean Star under 49 U.S.C. § 40115, we therefore grant its motion.

Caribbean Star, a corporation organized and existing under the laws of Antigua, is wholly-owned by Caribbean Star Airlines Holdings, Ltd. (CSAH), an Antiguan corporation. CSAH in turn is wholly-owned by Mr. R. Allen Stanford.<sup>2</sup> Mr. Stanford holds dual citizenship (Antiguan and U.S.). The carrier is properly licensed by the Organization of Eastern Caribbean States (OECS) and was designated by the Government of Antigua and Barbuda on February 20, 2004, under Annex 1 of U.K. Route 9 of the Agreement to perform the proposed services.

Caribbean Star may not conduct U.S. operations with its own aircraft and crews without further order of the Department.<sup>3</sup>

The statement of authorization granted to Caribbean Sun is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Caribbean Sun and Caribbean Star continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Caribbean Sun and/or Caribbean Star must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.<sup>4</sup> Such notices should be filed in Docket OST-2004-17517.

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(d) The authority granted here is specifically conditioned so that neither Caribbean Sun nor Caribbean Star shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Action taken by: Paul L. Gretch, Director**  
**Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*

[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

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<sup>2</sup> Mr. Stanford is also the sole owner of Caribbean Sun through his ownership of Caribbean Sun Airlines Holdings, Inc., a Delaware corporation.

<sup>3</sup> Antigua is currently a Category 2 country under the FAA's International Aviation Safety Assessment Program (IASA).

<sup>4</sup> We expect this notification to be received within 10 days of such noneffectiveness or of such decision.

## **Foreign Carrier Exemption Conditions**

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

### U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.